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#95009
NO.
STATE OF NEBRASKA
OFFICIAL
FEB 14 1995
DEPT. OF JUSTICE

DATE: February 13, 1995

SUBJECT: Civil Liability for Equine Activities Under LB 348

REQUESTED BY: Senator Dan Fisher
Nebraska Legislature

WRITTEN BY: Don Stenberg, Attorney General
Hobert B. Rupe, Assistant Attorney General

This is in response to your request, dated January 27, 1995, for the opinion of this office regarding LB 348. Specifically, you have inquired whether the provisions of said bill would excuse horse owners from all liability for their animals.

Section 3 of LB 348 reads as follows:

> Except as provided in section 4 of this act, (1) an equine activity sponsor, an equine professional, or any other person, which includes a corporation, limited liability company, or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and (2) no participant nor participant's representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

The above-quoted provision does purportedly narrow the scope of liability in regard to the "inherent risk of equine activity." Said phrase is defined in Section 2(6) of LB 348 which states:

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(6) Inherent risks of equine activities means those dangers or conditions which are an integral part of equine activities including, but not limited to:

(a) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;

(b) The unpredictability of an equine's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

(c) Certain hazards such as surface and subsurface conditions;

(d) Collisions with other equines or objects; and

(e) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the equine or not acting within his or her ability; . . .

Thus, it can be deduced from the above-quoted provisions that LB 348 purportedly grants a broad exemption of liability to equine owners, equine activity sponsors, and equine professionals. However, that exemption is <u>not</u> complete as it is modified by Section 4 of LB 348 which states in pertinent part:

(1) This act shall not apply to the horseracing industry as regulated in sections 2-1201 to 2-1229.

(2) Nothing in section 3 of this act prevents or limits the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional, or person:

(a) Provided the equipment or tack and the equipment or tack caused the injury because the equine activity sponsor or professional failed to reasonably and prudently inspect or maintain the equipment or tack;

(b) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the particular equine based on the participant's representations of his or her ability;

(c) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the equine activity sponsor, equine professional, or person and for which warning signs were not conspicuously posted;

(d) Commits an act or omission which a reasonable, prudent person would not have done or omitted under the same or similar circumstances or which constitutes willful or wanton disregard for the safety of the participant and that act or omission was a proximate cause of the injury; or

(e) Intentionally injures the participant.

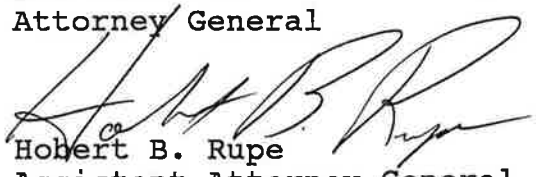
. . . .

The above-quoted exceptions enumerate numerous acts or omissions by an equine activity sponsor, equine professional, or other person which would not be exempt under LB 348 and which could form the basis of liability.

In summary, LB 348 purports to limit liability for certain equine activities; however, the exceptions contained in the bill are so broad as to virtually swallow up the general provisions limiting liability. For example, Section 4(2)(d), quoted above, would appear to preclude limiting liability if the equine professional, sponsor, or other person was negligent, as that concept is commonly defined in tort law. Thus, in answer to your specific question, LB 348 certainly does not exclude an equine owner from all liability for his or her animal.

Sincerely yours,

DON STENBERG
Attorney General



Hobert B. Rupe
Assistant Attorney General

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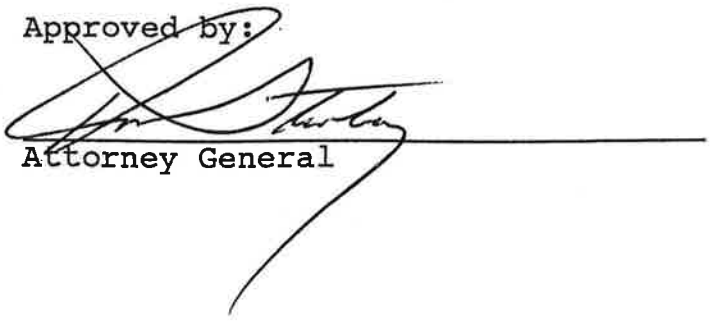
cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved by:



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